

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GINA CHAMPION-CAIN, an
individual; LUV SURF, LP, a
California limited partnership; ANI
COMMERCIAL CA I, LLC, a
California limited liability company;
ANI COMMERCIAL CA II, LP, a
California limited partnership,

Plaintiff,

v.

BRIAN MACDONALD, an
individual; LOVESURF, INC., a
Delaware corporation, and DOES 1-
10, inclusive,

Defendants.

CASE NO. 14-CV-02540-GPC-BLM

**ORDER GRANTING PLAINTIFFS’
MOTION FOR PRELIMINARY
INJUNCTION**

Having considered Plaintiffs’ GINA CHAMPION-CAIN, LUV SURF, LP,
ANI COMMERCIAL CA I, LLC, and ANI COMMERCIAL CA II, LP
(collectively, “Plaintiffs”) motion for a preliminary injunction against Defendant
LOVESURF, INC. (“Defendant”), the evidence submitted, and all of the relevant
papers and pleadings on file with the Court in this matter,

IT IS HEREBY ORDERED that:

1. Plaintiffs’ motion for a preliminary injunction is **GRANTED**.

1 **THE COURT FINDS that:**

2 2. For the reasons set out in the Court’s order granting plaintiff’s request
3 for preliminary injunction, the Court finds that plaintiffs have shown a likelihood of
4 success on the merits. (Dkt No. 167 at 12-16.)

5 3. Plaintiffs suffered, and continue to suffer, imminent irreparable injury
6 as a result of Defendant’s misconduct. Such irreparable injury includes: (a) the loss
7 of Plaintiff’s customers and clients, including Nordstrom, Inc., Urban Outfitters,
8 Inc., Tilly’s, Inc. and Backcountry.com; (b) damage to Plaintiffs’ business goodwill
9 and reputation, as evidenced by Defendant publishing false statements asserting that
10 Plaintiffs misappropriated trade secrets and are infringing on its trademarks, and (c)
11 Plaintiffs are unlikely to recover on any monetary judgment entered against
12 Defendant. (Dkt No. 167 at 16-18.)

13 4. Legal remedies are not adequate in this instance because Defendant is
14 currently operating under the tradename “Lovesurf” and is still selling products that
15 display logos that infringe on Plaintiffs’ Luv Surf Marks. A preliminary injunction
16 is necessary to prevent further injury to Plaintiffs and to ensure Defendant does not
17 continue infringing on the Luv Surf Marks. That Defendant cannot satisfy a
18 monetary judgment further establishes that injunctive relief is appropriate. (Dkt
19 No. 167 at 17-18.)

20 5. The balance of equities warrants issuing an injunction because
21 Plaintiffs will continue to be injured (lost profits, further damage to reputation and
22 goodwill) if Defendant is permitted to continue infringing on Plaintiffs and the Luv
23 Surf Marks. No weight is given to the fact that Defendant will have to operate
24 under a new tradename or create / market products displaying new logos. (Dkt. No.
25 167 at 18.)

26 6. Issuing a preliminary injunction is in the public’s best interest as an
27 injunction is necessary to prevent further confusion and deception in the
28 marketplace. Plaintiffs enjoy superior ownership of the Luv Surf Marks and are

1 entitled to sell their products without competing against products which create a
2 likelihood of confusion amongst consumers by displaying Defendant's similar,
3 infringing Lovesurf Marks. (Dkt. No. 167 at 19.)

4 **IT IS THEREFORE ORDERED that:**

5 7. Pursuant to 16 U.S.C. § 1116 and Federal Rule of Civil Procedure 65,
6 Defendant and its officers, agents, servants, employees, attorneys, owners and
7 representatives, and all other persons, firms or entities in active concert or
8 participation with Defendant (the "Restrained Parties") shall be, and hereby are,
9 pending a final determination or further order of the court, enjoined from:

- 10 a. Using any trademark, name, or logo which includes the terms
11 "LOVE" or "LUV" and the term "SURF" (or any related name
12 variations or images depicting same; for example, a heart design along
13 with the term "SURF" or the term "LOVE" with a big wave logo) in
14 connection with any goods or services falling within any International
15 Classification of Goods and Services in which Plaintiffs are using their
16 trademarks or have registrations / applications pending, including, but
17 not limited to the following list: IC 009, IC 014, IC 018, IC 024,
18 IC025, IC 028, IC 035, IC 036 and IC 039;
- 19 b. Using any domain name or social media account that includes
20 the terms "LOVE" or "LUV" and the term "SURF".
- 21 c. Operating under the tradename "Lovesurf."
- 22 d. The Restrained Parties are not enjoined from using the stylized
23 heart logo as depicted in and covered by Registration No. 4,708,675,
24 registered March 24, 2015 (a standalone heart logo without any word
25 mark).

26 8. No later than ten (10) days from the date of this Order, Defendant
27 shall, at its own expense, give actual notice of this Order to its officers, agents,
28 servants, employees, attorneys, resellers, owners and representatives, and all other

1 persons, firms or entities in active cooperation or participation with Defendant.

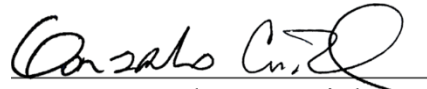
2 9. No later than twenty (20) days from the date of this Order, Defendant
3 shall file with the Court and serve upon Plaintiffs proof of compliance with
4 Paragraph 7 of the Order.

5 **IT IS FURTHER ORDERED that:**

6 10. The Court shall retain jurisdiction over this action to the extent
7 necessary to enforce and interpret this order.

8 **IT IS SO ORDERED.**

9
10 Dated: September 15, 2017


11 Hon. Gonzalo P. Curiel
12 United States District Judge

13
14
15 cc:
16 Brian MacDonald
17 32158 Camino Capistrano #104-501
18 San Juan Capistrano, CA 92675-3720
19
20
21
22
23
24
25
26
27
28